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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

BRYANT FU, Plaintiff and Appellant, v. ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP, Defendant and Respondent.	A152376 (San Francisco City & County Super. Ct. No. CGC-14-541875)

INTRODUCTION

Plaintiff Bryant Fu (Bryant[1]) purports to appeal from an order compelling him to arbitrate his malpractice claims against his former attorneys, Allen Matkins Leck Gamble Mallory & Natsis, LLP (Allen Matkins), and denying his petition to vacate an arbitration award in favor of Allen Matkins. Bryant's appeal is premature because an appeal lies from the judgment confirming the arbitration award—not from an order compelling arbitration or from an order denying a petition to vacate the arbitration award—and the trial court did not confirm the arbitration award. Nonetheless, we exercise our discretion to hear Bryant's appeal because, as we shall explain, the trial court was required to confirm the award when it denied Bryant's petition to vacate the arbitration award. (See Code Civ. Proc.,[2] § 1286; *Law Offices of David S. Karton v. Segreto* (2009)

[1] We refer to Bryant Fu by his first name for the sake of clarity; we intend no disrespect.

[2] All further undesignated statutory references are to the Code of Civil Procedure.

176 Cal.App.4th 1, 3 (*Segreto*).) Dismissing the appeal with an order instructing the trial court to enter a judgment confirming the award would only unnecessarily delay resolution of this case and needlessly consume both judicial and private resources.

Exercising our discretion, we treat this appeal as a petition for writ of mandate. On the merits, we conclude the trial court erred as a matter of law in determining that Bryant, a nonsignatory, was compelled to arbitrate his malpractice claims against Allen Matkins based on a prior retainer agreement between his parents and Allen Matkins for representation in an unrelated case.

FACTUAL AND PROCEDURAL BACKGROUND

I. Background of the Dispute

The case on appeal has its roots in a failed real estate partnership between Tony Fu (Bryant's father, hereafter "Fu") and his business partner Demas Yan. The disintegration of that relationship spawned numerous lawsuits.[3]

A. 2006 City Lawsuit

In May 2006, Allen Matkins was retained by Crystal Lei and Tony Fu, Bryant's parents, in connection with a lawsuit brought by the City and County of San Francisco, entitled *City and County of San Francisco, et al. v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-05-444789) (2006 City Lawsuit). Lei was the sole named defendant. The case involved claims of bribery and favors with a public official. On May 23, 2006, Allen Matkins entered into a legal services agreement with Lei and Fu (2006 Agreement). Lei and Fu signed the agreement. Bryant, who was a minor at the time, was not named in the lawsuit and did not the sign the agreement.

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[3] On our own motion, we take judicial notice of the Register of Actions in the following cases: *City and County of San Francisco, et al. v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-05-444789; *Demas Yan v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-07-467500); *Cheuk Tin Yan v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-08-478364); and *Augustine Fallay v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-09-489340. (See Evid. Code § 452, subd. (d).) We also grant the requests to take judicial notice filed by Bryant and Allen Matkins. (Evid. Code, § 459.)

The 2006 Agreement states that Allen Matkins' "policy, as well as provisions of the California Business & Professions Code in certain circumstances, requires that we have a written agreement with our clients setting forth the arrangements upon which we perform legal services. This letter will confirm the terms under which you have retained us *for this matter and any additional matters we handle on your behalf at your direction*." (Italics added.)

The arbitration provision provides, in pertinent part: "By signing this engagement letter, we agree that, in the event of any dispute or claim arising out of or relating to this Agreement, our relationship, our charges, or our services (including but not limited to disputes or claims regarding our charges, professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud, or violation of any statute or Rules of Professional Conduct), SUCH DISPUTE OR CLAIM SHALL BE RESOLVED BY SUBMISSION TO FINAL AND BINDING ARBITRATION IN SAN FRANCISCO COUNTY, CALIFORNIA BEFORE A RETIRED JUDGE OR JUSTICE. BY AGREEING TO ARBITRATE, YOU WAIVE ANY RIGHT YOU HAVE TO A COURT OR JURY TRIAL. If we are unable to mutually agree on a retired judge or justice, then each side will name one retired judge or justice and the two named persons will select a neutral judge or justice who will act as the sole arbitrator. *The fees of the arbitrator will be paid equally by both Allen Matkins and you.*" (Italics added.)

B. 2009 Lawsuits

In November 2009, Lei and Fu asked Allen Matkins to represent them both in connection with the following three lawsuits: *Demas Yan v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-07-467500); *Cheuk Tin Yan v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-08-478364); and *Augustine Fallay v. Crystal Lei, et al.* (Super. Ct. San Francisco County, No. CGC-09-489340). Bryant was not named in these lawsuits.

On November 16, 2009, Allen Matkins agreed to represent Lei and Fu in these three lawsuits (2009 Agreement). As it did in connection with the 2006 City Lawsuit, Allen Matkins sent Lei and Fu a letter purporting to "confirm the terms under which you

have retained us *for this matter and these terms will apply to any additional matters we handle on your behalf at your direction*." (Italics added.) The arbitration provision in the 2009 Agreement is identical to the one in the 2006 Agreement. On November 20, 2009, Fu wrote to Allen Matkins, asking that the arbitration provision be removed from the 2009 Agreement. Fu sent back the 2009 Agreement, unsigned, anticipating that Allen Matkins would revise it. The 2009 Agreement was never revised by Allen Matkins nor was it ever signed by Lei and Fu.

Despite the lack of a signed legal services agreement, Allen Matkins represented Lei and Fu in the three lawsuits referenced in the 2009 Agreement, as well as in two additional cases, that commenced in 2010 and 2012.

C. 2010 and 2012 Lawsuits

In or about July 2010, Fu brought a defamation action against Yan, entitled *Tony Fu v. Demas Yan, et al.* (Super. Ct. San Francisco County, No. CGC-10-501321) (2010 Lawsuit). In or about August 2010, Yan filed a cross-complaint naming Fu, Lei, and Bryant as cross-defendants. Eventually, the 2010 Lawsuit was removed to bankruptcy court, in light of Yan's then-pending bankruptcy proceedings.

In or about July 2012, Yan filed an action against Fu, Lei, and Bryant, entitled *Demas Yan v. Tony Fu, et al.* (Super. Ct. San Francisco County, No. CGC-12-522566) (2012 Lawsuit).

Allen Matkins did not send Fu, Lei, and Bryant legal services agreements regarding its services in connection with the 2010 and 2012 Lawsuits.

II. 2014 Malpractice Action and Motion to Compel

In September 2014, Lei filed a claim in Yan's bankruptcy case, seeking to recover the fees she paid Allen Matkins to represent her in the numerous cases filed by Yan. When Lei was unable to collect the fees from Yan's bankruptcy estate, she and Bryant sued Allen Matkins for legal malpractice and other claims (2014 Malpractice Action).[4] Among the claims asserted was that Allen Matkins' conduct fell below the standard of

[4] The lawsuit also alleged malicious prosecution and fraud claims against Yan.

care when it failed to file a motion to declare Yan a vexatious litigant before the 2010 Lawsuit was removed to bankruptcy court.

Allen Matkins filed a motion to compel arbitration of the 2014 Malpractice Action, based on the 2006 Agreement. Lei and Bryant opposed the motion on the grounds that no valid arbitration agreement existed. Lei and Bryant argued that the 2006 Agreement had expired and pertained only to the 2006 City Lawsuit. Lei and Bryant further contended that Bryant never signed the 2006 Agreement and that he was not named as party in the 2006 City Lawsuit. Indeed, Bryant was approximately 14 years old at the time of the 2006 City Lawsuit.

The trial court granted the motion to compel on the grounds that the 2006 Agreement made arbitrable "any additional matters" that Allen Matkins handled on Lei's behalf. As for Bryant, the court determined that he was bound as he "received the benefit of the retention agreement" because "it was signed pursuant to the rights and duties of his guardian." Lei and Bryant filed a motion for reconsideration, which the trial court denied. Thereafter, Lei and Bryant sought relief from this court by petitioning for a writ of mandate and then by seeking review in the California Supreme Court. Both petitions were summarily denied.[5]

III. Arbitration Award

Lei and Bryant represented themselves in the arbitration proceedings, arguing that Allen Matkins had committed malpractice in a variety of ways. The arbitrator found in favor of Allen Matkins.

IV. Motion to Vacate Award

Following the arbitration, Lei and Bryant filed a motion pursuant to sections 663 and 1286.2 to vacate the arbitration award and to set aside the order granting the motion to compel. In seeking to vacate the award, Lei and Bryant argued, among other things, that that the arbitrator "may have been corrupted" and should have disqualified herself because Allen Matkins had advanced its half the arbitration fees, as well as the half owed

[5] A different panel of this division denied the writ petition.

by Lei and Bryant. Lei and Bryant also claimed that the award unfairly saddled them with paying arbitration fees in excess of the parties' agreement limiting such fees to four hours.

At the hearing on the motion to vacate, the trial court explained that section 663 was inapplicable and that the request to set aside the motion to compelling arbitration was effectively an untimely motion for reconsideration. As for the arbitration award, the trial court agreed that requiring Lei and Bryant to pay fees in excess of the four-hour agreement was "unjust and unfair," but it did not constitute abuse of the arbitrator's powers. The court further explained: "Unfairness and unjustness are not a basis for me to vacate an arbitration award. The spirit of the four-hour agreement was that you shouldn't have to pay any more, and I would hope Allen Matkins and its law firm that is representing it will rise above this and take what I'm saying to heart and won't enforce it, but I can't force them to."

The trial court denied the motion to vacate the arbitration award and to set aside the order compelling arbitration. Bryant appealed; Lei has not joined this appeal. Allen Matkins filed a motion to dismiss the appeal due to lack of appellate jurisdiction, arguing that no final judgment confirming the arbitral award had been entered and that neither order identified in Bryant's papers was appealable. We denied the motion to dismiss without prejudice for reconsideration with the merits. Allen Matkins has renewed its request that we dismiss the appeal.

DISCUSSION

I. Reviewability

A threshold issue we must address is whether this court has jurisdiction to consider Bryant's appeal, which focuses entirely on the order compelling him to arbitrate his claims.[6] Allen Matkins argues that there is no appellate jurisdiction over this appeal,

[6] In his appellate briefs, Bryant does not challenge the merits of the order denying his petition to vacate. Accordingly, we do not address that order and limit our analysis to the order compelling arbitration.

because an order compelling arbitration is not independently appealable and because it has not sought to confirm the arbitration award.

"[T]he right of appeal is wholly statutory. . . ." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 109.) While an order denying a petition to compel arbitration is expressly appealable (§ 1294, subd. (a)), an order compelling arbitration is not immediately reviewable. (*Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1122.) The rationale behind this rule is that an appeal, prior to the resolution of the issues in controversy, would delay and defeat the purpose of the arbitration statute. (*Wheeler v. St. Joseph Hospital* (1976) 63 Cal.App.3d 345, 353.) However, a party compelled to arbitrate is entitled to have the validity of the order reviewed in an appeal from the judgment confirming the arbitrator's award. (*Reyes v. Macy's, Inc.*, at p. 1122; *Wheeler v. St. Joseph Hospital,* at p. 353.)

Section 1294 authorizes an aggrieved party to appeal from an order *dismissing* a petition to vacate an arbitration award and also from a judgment confirming an arbitration award. (§ 1294, subds. (b) & (d).) Section 1294, however, does not authorize an appeal from an order *denying* a petition to vacate an arbitration award. (*Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1454 (*Mid-Wilshire*) [appeal dismissed because an order denying a motion to vacate an arbitration award is not an appealable order].)

Here, the trial court entered an order *denying* Bryant's petition to vacate the arbitration award but did not dismiss the petition or enter a judgment confirming the arbitration award. The record reflects that the trial court was concerned about the resulting unfairness to Bryant if Allen Matkins attempted to enforce the award, which may explain the absence of a judgment confirming the arbitration award. Allen Matkins asserts that because it has not sought to confirm the arbitration award, Bryant cannot pursue his appeal. We disagree. Following this logic, a prevailing party could thwart an opponent's appellate rights by purposely failing to petition for confirmation of the award. This is not the law.

The Code of Civil Procedure required the trial court to confirm the arbitration award *and* enter judgment, once the court denied Bryant's petition to vacate the award.

(*Segreto, supra,* 176 Cal.App.4th at pp. 8–9.) Section 1286 states, "If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, . . . unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceedings." (§ 1286.)

Section 1286 therefore gave the trial court four options once Bryant filed his petition to vacate: It could " '(1) confirm the award, (2) correct the award and confirm it as corrected, (3) vacate the award, or (4) dismiss the proceedings.' [Citation.]" (*Segreto, supra,* 176 Cal.App.4th at p. 8.) In other words, " 'the court *must confirm* the award, *unless* it either vacates or corrects it. [Citation.]' [Citation.]" (*Ibid.,* italics in original.) Moreover, once a trial court confirms an arbitration award, section 1287.4 requires the court to enter judgment in conformity with the award. (*Segreto,* at p. 9; § 1287.4 ["If an award is confirmed, judgment shall be entered in conformity therewith"].)

This statutory framework explains why section 1294 does not authorize an appeal from an order denying a petition to vacate an arbitration award. If the trial court denies a petition to vacate, the court must confirm the award and enter judgment in conformity therewith. (*Segreto, supra,* 176 Cal.App.4th at p. 9.) An appeal lies from that judgment, and the unsuccessful party on the petition to vacate may challenge that ruling when appealing from the judgment. (*Mid-Wilshire, supra,* 7 Cal.App.4th at p. 1454.)

These authorities suggest that Bryant's appeal is premature in the same way as an appeal from an order sustaining a demurrer without leave to amend or an order granting summary judgment are premature. In both instances, the appeal lies from the judgment entered after the order sustaining the demurrer or granting summary judgment, not from the underlying order. (*Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1396 ["An order sustaining a demurrer without leave to amend is not appealable, and an appeal is proper only after entry of a dismissal on such an order"]; *Kasparian v. AvalonBay Communities* (2007) 156 Cal.App.4th 11, 14, fn. 1 ["An appeal lies from the judgment, not from an order granting a summary judgment motion"].)

Because Bryant prematurely appealed from the order denying his petition to vacate the arbitration award rather than a judgment confirming the award, we could dismiss the appeal for want of appellate jurisdiction. (*Mid-Wilshire, supra,* 7 Cal.App.4th at p. 1454.) Doing so, however, would result only in a remand to the trial court for it to enter judgment confirming the award followed by Bryant filing a second appeal raising the same challenges presented in this appeal.[7]

An appellate court has the discretion to treat an appeal from a nonappealable order as a petition for writ of mandate, but only in unusual cases where the interests of justice will be best served by that procedure. (*Olson v. Cory* (1983) 35 Cal.3d 390, 401; *Mid-Wilshire, supra,* 7 Cal.App.4th at pp. 1455–1456.) Such circumstances are present here. To avoid further delay and to conserve both judicial and private resources, we exercise our discretion and construe Bryant's appeal as a petition for writ of mandate.

Allen Matkins argues that Bryant has forfeited the right to challenge the order granting the motion to compel. The record discloses, however, that Bryant has challenged the power of the court to compel arbitration at every available opportunity: he raised that issue in his opposition to the motion to arbitrate, in his motion for reconsideration, in his petition for writ of mandate before this court and in his petition for review in the Supreme Court, and in his motion to vacate the award. Thus, we conclude that Bryant is not precluded—either by forfeiture or estoppel—from challenging the validity of the order compelling arbitration.[8]

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[7] We note that although a judgment has been entered, it merely attaches to the order denying Bryant's petition to vacate and does not purport to confirm the arbitration award.

[8] The summary denials of the petition for writ of mandate and the petition for review have no preclusive effect regarding the validity of the order granting the motion to compel. (See, e.g., *Kowis v. Howard* (1992) 3 Cal.4th 888, 894–895 [summary denial of writ petition not law of the case or res judicata]; *Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 640 [summary denial not decision on merits].)

II. The 2006 Agreement Does Not Apply to the Malpractice Claims

Bryant contends the trial court erred in ordering him to arbitrate his legal malpractice claims against Allen Matkins, because the 2006 Agreement does not apply to the 2010 and 2012 Lawsuits—the two lawsuits in which he was named as a party. He further contends that as a non-signatory, he was not bound by the 2006 Agreement.

A. Applicable Law and Standard of Review

"The purpose of arbitration is to have a simple, quick and efficient method to resolve controversies." (*New Linen Supply v. Eastern Environmental Controls, Inc.* (1979) 96 Cal.App.3d 810, 818.) For this reason, there is a strong public policy favoring contractual arbitration. (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1062 (*Bono*).) But that policy " ' "does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration." ' " (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.)

A party to an arbitration agreement may petition the court to compel other parties to arbitrate a dispute governed by their agreement. (§ 1281.2; see *Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 15 (*Jones*); *Segal v. Silberstein* (2007) 156 Cal.App.4th 627, 633.) The petitioner bears the burden of proving by a preponderance of the evidence the existence of a valid arbitration agreement and that the dispute falls within the scope of the arbitration clause. (See *Jones, supra,* 195 Cal.App.4th at p. 15.) The "party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." (*Ramos v. Westlake Services LLC* (2015) 242 Cal.App.4th 674, 685 (*Ramos*).)

"[W]hen presented with a motion to compel arbitration, the court's first task is to determine whether the parties have entered into an agreement to arbitrate their claims. [Citation.] Courts 'apply general California contract law to determine whether the parties formed a valid agreement to arbitrate their dispute.' [Citation.]" (*Ramos, supra,* 242 Cal.App.4th at pp. 685–686.)

In determining the scope of an arbitration clause, " ' "[t]he court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made." ' " (*Bono, supra,* 147 Cal.App.4th at p. 1063.) "[T]he terms of the specific arbitration clause under consideration must *reasonably cover* the dispute as to which arbitration is requested." (*Ibid.*, italics added.) "It is a well-settled rule of law that ambiguities in a written contract are to be construed against the party who drafted it." (*Victoria v. Superior Court* (1985) 40 Cal.3d 734, 745 (*Victoria*).) Further, in the context of legal services, "[a]ny ambiguity in a retainer agreement is construed in favor of the client and against the attorney." (*Banning Ranch Conservancy v. Superior Court* (2011) 193 Cal.App.4th 903, 913 (*Banning Ranch*); see *Mayhew v. Benninghoff* (1997) 53 Cal.App.4th 1365, 1370 [affirming denial of attorney's motion to compel business dispute with client; noting "the doctrine of *contra proferentum* (construing ambiguous agreements against the drafter) applies with even greater force when the person who prepared the writing is a lawyer"].)

In reviewing a court's order granting a motion to compel arbitration, we examine the court's factual findings under the substantial evidence standard and review the court's legal conclusions under the de novo standard. (See *Bono, supra,* 147 Cal.App.4th at pp. 1061–1062; *City of Vista v. Sutro & Co.* (1997) 52 Cal.App.4th 401, 407.)

B. Bryant's Malpractice Claims Are Not Within the Scope of the 2006 Agreement

In order to discern the parties' intent, we turn first to the plain language of the 2006 Agreement. (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 609.) The first two paragraphs provide as follows: "Thank you for retaining Allen Matkins to represent Crystal Lei in connection with [a] lawsuit with the City and County of San Francisco entitled *City and County of San Francisco v. Crystal Lei, et al.* . . . . [¶] Our Firm's policy, as well as provisions of the California Business & Professions Code in certain circumstances, requires that we have a written agreement with our clients setting forth the arrangements upon which we perform legal services. This letter will confirm the terms

under which you have retained us for this matter and *any additional matters we handle on your behalf or at your direction*." (Italics added.)

Allen Matkins argues that the phrase "any additional matters we handle on your behalf or at your direction" in the 2006 Agreement "unambiguously encompasses any additional litigation that Tony Fu and Crystal Lei may hire Allen Matkins to handle on their behalf, such as the Yan disputes." In contrast, Bryant argues that the 2006 Agreement was limited to the 2006 City Lawsuit filed against Lei, which is unrelated to his malpractice claims.

Contrary to Allen Matkins' position, the scope of the 2006 Agreement cannot reasonably be interpreted as applying to Bryant's 2014 Malpractice Action. First, the 2006 Agreement substantially predates the 2010 and 2012 Lawsuits that form the basis of Bryant's malpractice claims. Second, it is undisputed that Bryant, who was then approximately 14 years old, was not a party to the 2006 City Lawsuit and did not sign the 2006 Agreement. Third, the phrase "any additional matters we handle on your behalf or at your direction" cannot be reasonably be interpreted to apply to all future litigation. Indeed, Allen Matkins' conduct in sending a new engagement letter in connection with the three lawsuits filed against Lei and Fu in 2009 undermines its contention here that the 2006 Agreement was intended to and did cover all future legal services for time immemorial.[9] Finally, to the extent the provisions of the 2006 Agreement are ambiguous, we construe them against Allen Matkins, as both the drafters and the attorneys here. (*Victoria, supra,* 40 Cal.3d at p. 745; *Banning Ranch, supra,* 193 Cal.App.4th at p. 913.)

[9] We further note that if we were to accept Allen Matkins' position here, we would effectively be permitting Allen Matkins to trump Fu's express rejection of the arbitration provision in the 2009 Agreement, by allowing the law firm to fall back on the 2006 Agreement. Such a result would violate not only traditional notions of fairness, but also the general principle that a party can be compelled to arbitrate only those issues it actually agreed to arbitrate. (*Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal.App.4th 227, 230–231.)

Accordingly, we conclude the 2006 Agreement does not extend to work conducted on Bryant's behalf in 2010 and 2012, unrelated to the 2006 City Lawsuit.

Because Allen Matkins cannot compel arbitration of Bryant's malpractice claims under the 2006 Agreement, we need not determine whether, as a nonsignatory he was bound to arbitrate such disputes. However, we elect to address certain of Allen Matkins' arguments, if only to underscore the lack of merit in Allen Matkins' efforts to compel Bryant to arbitrate his claims. Although there are exceptions to the "general rule against compelling nonsignatories to arbitrate," Allen Matkins fails to establish any. (*Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1065 (*Crowley*).)

Allen Matkins suggests that Bryant was required to arbitrate as a third-party beneficiary of the 2006 Agreement. This can be a basis for compelling arbitration (*Crowley, supra,* 158 Cal.App.4th at pp. 1069–1070), but the third-party beneficiary must be "one of a class of persons for whose benefit [the agreement] was made." (*Steve Schmidt & Co. v. Berry* (1986) 183 Cal.App.3d 1299, 1313.) " '[I]t is not enough that the third party would *incidentally* have benefited from performance. [Citations.]' [Citation.] 'The contracting parties must have *intended* to confer a benefit on the third party.' " (*Epitech, Inc. v. Kann* (2012) 204 Cal.App.4th 1365, 1372, italics added.) Under the 2006 Agreement, Allen Matkins agreed to provide legal representation to Lei in the 2006 City Lawsuit. Allen Matkins identifies nothing in the 2006 Agreement or the record to suggest the 2006 Agreement was intended to benefit Bryant under the third-party beneficiary doctrine. Even if it were sufficient for Bryant to receive benefits, Allen Matkins has not made that showing, either. Allen Matkins suggests that Bryant, as a minor, benefited from the 2006 Agreement by receiving legal representation in other matters. But because it has not established that the 2010 and 2012 Lawsuits were governed by the 2006 Agreement, Allen Matkins cannot characterize that legal work years later as a benefit that flowed from the 2006 Agreement.

The authorities cited by Allen Matkins do not support its position. (Civ. Code § 3521 [providing "he who *takes the benefit* must bear the burden," italics

added]; *NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 67–68, 84 [wife seeking benefits of husband's malpractice insurance required to arbitrate claims]; *Doyle v. Giuliucci* (1965) 62 Cal.2d 606, 609–610 [minor bound by arbitration provision in medical services agreement for child's benefit that was signed by minor's father]; *Molecular Analytical Systems v. Cipheregen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 701, 714–717 [nonsignatory entitled to enforce arbitration provision based on doctrine of equitable estoppel, where plaintiffs' claims depended on underlying contractual obligations of the agreement containing the arbitration clause].)

We conclude that Bryant was not required to arbitrate his legal malpractice claims against Allen Matkins.

DISPOSITION

Treating this appeal as a petition for a writ of mandate, the petition is granted. Let a writ of mandate issue, directing the trial court to vacate its order compelling arbitration and to enter a new order denying the motion to compel arbitration. Bryant is entitled to his costs on appeal.[10]

[10] Bryant has filed a motion for sanctions, claiming that Allen Matkins' attorneys have filed false declarations, persisted in intentionally misrepresenting material facts, and continually sought to deceive the courts. Bryant further claims this alleged misconduct has taken a significant financial toll. Sanctions should be used sparingly to deter only the most egregious conduct (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 649–650), and they are not warranted here. Each side has been deeply entrenched in its own version of the facts, and we find no sanctionable conduct on the part of Allen Matkins' attorneys. Moreover, financial hardship is the inevitable by-product of extremely contentious litigation such as the case at bar. Accordingly, the motion for sanctions is denied.

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BROWN, J.

WE CONCUR:

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STREETER, ACTING P. J.

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TUCHER, J.